

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY



<b>United States District Court</b>		District <u>Middle District of North Carolina</u>	
Name (under which you were convicted): <u>Donald Ray Morgan</u>		Docket or Case No.: <u>14-cr-0194/414-TDS</u>	
Place of Confinement: <u>USP-Marion</u>		Prisoner No.: <u>#80886-053</u>	
UNITED STATES OF AMERICA		Movant (include name under which convicted) <u>V. Donald Ray Morgan</u>	

**MOTION**

- (a) Name and location of court which entered the judgment of conviction you are challenging:  
US District Court for the Middle District of North Carolina  
251 N. MAIN ST STE 2 WINSTON SALEM, NC 27101
- (b) Criminal docket or case number (if you know): 14-cr-0194/0414-TDS
- (a) Date of the judgment of conviction (if you know): June 5, 2015
- (b) Date of sentencing: May 13, 2015
- Length of sentence: 180 months plus 63 months consecutive (243 months)
- Nature of crime (all counts):  
Count One: Felon In Possession Of a Firearm 18 USC §922(g)/924(a)(2)  
Count Two: Attempt To Provide Material Support To A Foreign Terrorist Organization 18 USC §2339B
- (a) What was your plea? (Check one)  
(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐  
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?  
guilty to both counts
- If you went to trial, what kind of trial did you have? (Check one) n/a Jury ☐ Judge only ☐
- Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
- Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

- (a) Name of court: \_\_\_\_\_ n / a  
(b) Docket or case number (if you know): \_\_\_\_\_ n / a  
(c) Result: \_\_\_\_\_ n / a  
(d) Date of result (if you know): \_\_\_\_\_ n / a  
(e) Citation to the case (if you know): \_\_\_\_\_ n / a  
(f) Grounds raised: \_\_\_\_\_  
n / a

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): \_\_\_\_\_ n / a  
(2) Result: \_\_\_\_\_ n / a  
\_\_\_\_\_ n / a  
(3) Date of result (if you know): \_\_\_\_\_ n / a  
(4) Citation to the case (if you know): \_\_\_\_\_ n / a  
(5) Grounds raised: \_\_\_\_\_  
n / a

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: \_\_\_\_\_ n / a  
(2) Docket or case number (if you know): \_\_\_\_\_ n / a  
(3) Date of filing (if you know): \_\_\_\_\_ n / a  
(4) Nature of the proceeding: \_\_\_\_\_ n / a  
(5) Grounds raised: \_\_\_\_\_  
n / a

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: n / a

(8) Date of result (if you know): n / a

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: n / a

(2) Docket of case number (if you know): n / a

(3) Date of filing (if you know): n / a

(4) Nature of the proceeding: n / a

(5) Grounds raised: n / a

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: n / a

(8) Date of result (if you know): n / a

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

n / a

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:** Morgan is actually innocent of his conviction for violation of 18 USC §922(g)(1) pursuant to Rehaif v. United States 139 S Ct 2191 (2019).

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

As described in attached brief.

**(b) Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Issue was precluded by binding Circuit precedent: United States v Langley 62 F 3d 602 (4th Cir 1995)(en banc).

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: n/a

Name and location of the court where the motion or petition was filed:

n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order, if available):

n/a

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

n/a

Docket or case number (if you know):

n/a

Date of the court's decision:

n/a

Result (attach a copy of the court's opinion or order, if available):

n/a

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

This is the first 28 USC §2255 petition.

**GROUND TWO:**

n/a

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Ground One has never been previously presented in federal court because it was precluded by Langley.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

n/a

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:

Richard Andrew McCoppin McCoppin & Associates 1250 SE Maynard Rd

(b) At the arraignment and plea:

Ste 202 Cary NC 27511

(c) At the trial:

n/a

(d) At sentencing:

as above

(e) On appeal:

n/a

(f) In any post-conviction proceeding:

n/a

(g) On appeal from any ruling against you in a post-conviction proceeding:

n/a

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☒ No ☐

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

The additional count which was charged separately but joined for sentencing.

(b) Give the date the other sentence was imposed: same

(c) Give the length of the other sentence: 180 months

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

Rehaif was decided June 21, 2019. Morgan is actually innocent as described in the attached brief.

Therefore, movant asks that the Court grant the following relief:

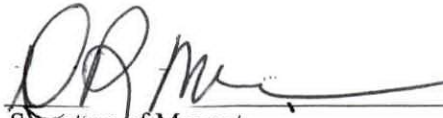
Vacate the 18 USC §922(g)(1) conviction and remand as appropriate.

or any other relief to which movant may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on SEPT 28 2020.  
(month, date, year)

Executed (signed) on 28 SEPT 2020 (date)

  
\_\_\_\_\_  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.